

**CORRUPTION, CRIME AND MISCONDUCT AND  
CRIMINAL PROPERTY CONFISCATION AMENDMENT BILL 2017**

*Committee*

Resumed from 13 June. The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

**Clause 1: Short title —**

Progress was reported after the clause had been partly considered.

**Hon MICHAEL MISCHIN:** On the conclusion of our last episode, I had asked a question about one of the letters tabled by the Leader of the House from the Chief Judge of the District Court, who raised a caveat in the last paragraph of his letter dated 7 March 2017 about consideration of the possible obligation to give discovery in civil proceedings and the extent to which that may create awkwardness in view of the commission's functions and powers. I wonder whether the minister can expand on what the Chief Judge was commenting on in that regard, so that we can understand his concerns.

**Hon SUE ELLERY:** I cannot speak for what was in the Chief Judge's mind when he wrote, but I can advise that the commission has considered the possible obligation to give discovery. Confiscation proceedings are civil proceedings, and so the rules of discovery apply, and the commission will comply with those rules. Where appropriate, the commission will make applications for public interest immunity on discoverable material and suppression orders.

**Hon MICHAEL MISCHIN:** I refer now to a letter from the then Commissioner of Police, Dr Karl O'Callaghan, APM, dated 7 April 2017, to the Corruption and Crime Commissioner, regarding the Corruption and Crime Commissioner's sounding out of information about what had been proposed. I am looking at the third last paragraph and the penultimate paragraph of that letter and his comment —

To date UeW investigations conducted by WA Police and the DPP have not been markedly successful with no UeW action commenced since —

The year 2017.

**Hon Sue Ellery:** It was 2011.

**Hon MICHAEL MISCHIN:** Sorry; it was since 2011. The minister is quite right. It is that time of night. Why have those investigations not been markedly successful; and how will what is proposed in this bill change this success rate?

**Hon SUE ELLERY:** I responded to this in my second reading reply and I referred to the Joint Standing Committee on the Corruption and Crime Commission's first report, "Proceeds of crime and unexplained wealth: A role for the Corruption and Crime Commission?", from June 2013. I spelt out the relevant provisions. The copy I have does not have page numbers. I am quoting from the document. The relevant bit is —

The fact that the WA Police have preferred in the past to have the Office of the DPP conduct what are resource-intensive financial investigations—work for which the Office of the DPP is not properly or adequately resourced—indicates, in part, that investigations of this nature are a low priority for the WA Police.

I think the second part of the member's question is what in the bill before us would change those circumstances. If I may, essentially there are two points that go to the question that the member asked. We expect improved efficiency from the commission conducting examination orders in-house; and, secondly, the coercive powers and confiscation act powers together are significantly different and we anticipate that they will result in improved outcomes.

**Hon MICHAEL MISCHIN:** The letter goes on to state —

The majority of CPCA investigations are criminal investigations with the accused charged with a criminal offence, primarily the possession of trafficable quantities of illicit drugs.

Does the government, on the advice of the CCC, see that that is going to be markedly different with the CCC conducting these sorts of actions for unexplained wealth? Will they tend pretty much to be part of or adjunct to investigations into drug trafficking or are there other things that the CCC will focus on?

**Hon SUE ELLERY:** I will make a couple of points. I touched on this a little bit in my second reading reply. The commission has a role in investigating criminal conduct that amounts to serious misconduct under the CCM act—for example, offences of corruption or bribery—and anticipates that unexplained wealth matters may arise from those investigations. The benefit of the unexplained wealth provisions is that there does not have to be a predicate criminal offence. In fact, I remember saying that in my second reading reply. The commission has intelligence

analysts, forensic accountants and covert capabilities and is in a position to proactively identify and investigate targets for unexplained wealth when there is insufficient evidence for a criminal investigation. I am also advised that the CCC will not have powers with respect to drug trafficker declarations. The primary purpose—I made this point in my second reading reply as well—is to deter and remove financial motivation for criminal activity.

**Hon AARON STONEHOUSE:** I alluded to this in my remarks in the second reading debate, and I do not think I have received an answer yet. The second reading speech provided by the government states —

The DPP will maintain exclusive jurisdiction over investigating or initiating proceedings in relation to crime-used property, crime-derived property or drug trafficker declarations.

The DPP will maintain exclusive jurisdiction over those property confiscation proceedings. However, this does not seem to line up with some parts of the bill. I will raise them now because there are a few different clauses. Amended section 41(1) will read —

The DPP or the CCC may apply to the court for a freezing order for property.

That includes both the DPP and the CCC using freezing orders for property. Section 43(8) deals with freezing orders made on crime-used or crime-derived grounds and states —

The court may make a freezing order for property if there are reasonable grounds for suspecting that the property is crime-used or crime-derived.

Referring back to section 41(1), that empowers the court to make a crime-used or crime-derived freezing order upon application by the Corruption and Crime Commission. However, the second reading speech outlined that those proceedings would remain the exclusive jurisdiction of the Director of Public Prosecutions. That seems to be somewhat contradictory and I am hoping the minister can clarify that for me.

I have a follow-up question about drug trafficker declarations, but I will wait for the minister's answer on crime-used and crime-derived freezing orders.

**Hon SUE ELLERY:** Although the member is right in having identified that it is technically possible for the commission to apply for an order, it does not have the power to do the investigation. That would need to be done in order for it to apply for the order. I guess the possibility is there, but given that it does not have the power to do the work that would lead to having the material it needs to make the application for the order, in a practical sense it is not going to happen.

**Hon AARON STONEHOUSE:** I can appreciate that it does not have the power to investigate crime-used and crime-derived property confiscations, but given that it has the power to apply for an order, is it possible that in the future there could be a foreseeable circumstance in which the CCC begins making those orders, perhaps in concert with the DPP, and perhaps leveraging the CCC's considerable resources? Is it foreseeable that those powers might be exercised by the CCC down the track, even if it is not investigating but is making an application for freezing orders?

**Hon Sue Ellery:** To be clear: the investigative powers? They don't have them now, under the bill. They don't have them.

**Hon AARON STONEHOUSE:** Could it make the freezing orders, perhaps? If the DPP is undertaking the investigations, could the CCC then make freezing orders in cooperation with the DPP? Is there any circumstance in which —

**Hon SUE ELLERY:** Just so we are absolutely clear, the commission does not make the order; the court makes the order, but the commission can apply. The advice I have been provided is that theoretically the power exists for the commission to apply for an order. However, it does not have the investigative powers to give it the information it would need to be able to fulfil what it would need to demonstrate to the court to apply for the order. That is the fundamental difference.

**Hon AARON STONEHOUSE:** Moving on to the drug trafficker confiscations I alluded to earlier, section 43(5), which deals with drug trafficker freezing orders, will be amended to refer to the application for the freezing order, whereas previously I think it referred exclusively to the DPP. Now it will merely refer to the application for the freezing order. Going back to section 41(1), this will again include the CCC. I suppose in practical terms drug trafficker confiscation proceedings are normally initiated as part of some kind of drug trafficking charge. Am I right in my interpretation that, technically, the CCC will be granted these powers to apply for freezing orders in the case of drug trafficker declarations?

**The DEPUTY CHAIR (Hon Adele Farina):** That is a very good question from Hon Aaron Stonehouse, but noting the time, I am required to report progress, so we will have to wait for the reply to that question.

**Progress reported and leave granted to sit again, pursuant to standing orders.**